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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/930,482	08/16/2001	Stacy Jean Driskell	53394.000557	1011

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EXAMINER

HECKENBERG JR, DONALD H

ART UNIT	PAPER NUMBER
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1722

DATE MAILED: 12/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/930,482

Applicant(s)

DRISKELL, STACY JEAN

Examiner

Donald Heckenberg

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 11 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) 7-11 and 16-20 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 12-15 and 21-25 is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 August 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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1. Applicant's election with traverse of Group V (claims 12-15 and 21-25) in the replied filed 11 October 2005 is acknowledged.

Applicant's arguments that Group I (claims 1-6) should be included with the elected claims are found persuasive.

Therefore the restriction requirement between these two groups is withdrawn, and claims 1-6 are considered on their merits along with claims 12-15 and 21-25 in this Office Action.

Applicant has not argued that the restriction requirement between Groups I & V and the other Groups is improper, and thus the other parts of the restriction requirement have been treated as an election without traverse. MPEP § 818.03(a). Accordingly, claims 7-11 and 16-20 are withdrawn from further consideration.

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 2 and 3 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

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Claim 2 recites the diverter plate is bent at an angle of up to about seventy (70) degrees "as measured from that section of a hypothetical plane extending lengthwise beyond the tip of the nozzle, if the diverter plate were straight, and the angled diverter plate." This recitation of how the angle is to be measured is incomprehensible. It seems to include three lines - a line delineated by the hypothetical plane, a line delineated by the straight diverter plate, and a line delineated by the angled plate- but does not indicate between which two lines the angle is being measured. Appropriate clarification and correction is required.

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

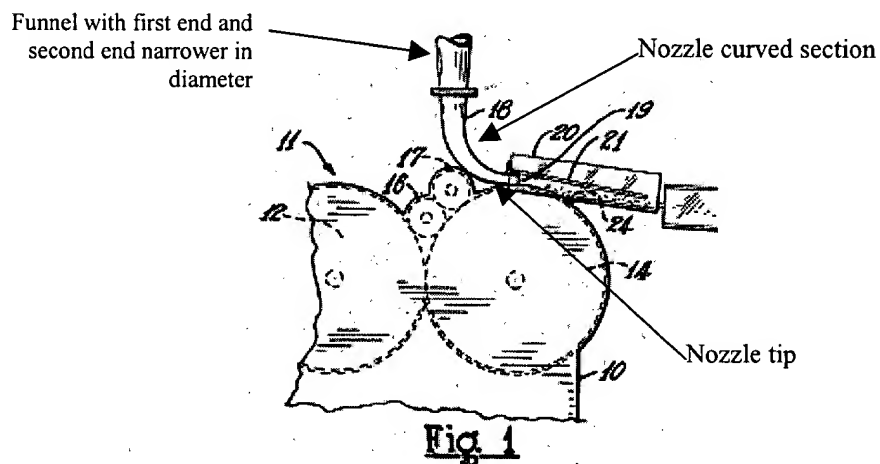
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-3, 5, and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Simison (U.S. Pat. No. 3,544,414).

Simison discloses an apparatus for producing a fibrous mat. As shown in the portion of Fig. 1 reproduced below, the apparatus includes a funnel having a first end and a second end,

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with the second end being narrower in diameter than the first end. A nozzle (18) having a straight section, a curved section, and a tip is provided, with the straight section being operatively associated with the second end of the funnel. A diverter plate (21) is operatively associated with the curved section of the funnel. The tip is substantially in contact with the nozzle, and the curved section of the nozzle tapers to form the tip (Fig. 1). The apparatus is further as such that the curve in the curved section of the nozzle is deposited between the straight section of the nozzle and the point in the nozzle wherein the nozzle begins to uniformly decrease in size to form the tip (see Fig. 1).



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It is noted that the preamble of claim 1 recites an intended use for the claimed apparatus. Specifically, the apparatus is to be used for dispensing super absorbent particles. This recitation has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See In re Hirao, 535 F.2d 67, 190 USPQ 15 (CCPA 1976); Kropa v. Robie, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951). In this case, the preamble recitation merely reflects an intended use of the apparatus. Nothing in the structure recited in the body of the claim requires the preamble for completeness.

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

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7. The factual inquiries set forth in Graham v. John Deere Co., 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Simison.

Simison discloses the apparatus as described above. Simison does not disclose how the funnel and nozzle are connected, and thus does not disclose the funnel and the nozzle to be of unitary construction. If, however, the funnel and nozzle in Simison were not of unitary construction, to modify the apparatus to be as such would be merely to make the two components integral. Normally, the provision of making to parts integral is seen as within the skill of an ordinary artisan. In re Larson, 340 F.2d 965, 144 USPQ 347 (CCPA 1965). In the instant case, to make the nozzle and funnel in the apparatus of Simison integral would not otherwise effect the function of the apparatus, and would result in less componet parts. As such,

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this modification would have been obvious to one of ordinary skill in the art.

9. Claims 12-15 and 21-25 are allowed.

10. The following is a statement of reasons for the indication of allowable subject matter:

The prior art of record fails to teach or suggest a system for making an absorbent core as recited in claims 12-15 and 21-25 of the instant application. The closest prior art is disclosed by either Simison or Baker et al. (U.S. Pat. No. 6,848,894). Simison discloses the apparatus as described above. There is not, however, any reason, suggestion, or motivation to combine the apparatus with a system with the combination of components recited in claim 12; or similarly, a system as disclosed by Baker.

11. The following references cited but not relied upon are deemed pertinent to the instant application:



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Evans, Jr. (U.S. Pat. No. 2,589,068) discloses a bar accessory comprising the combination of a funnel and nozzle.

Pfeifer et al. (U.S. Pat. No. 4,140,450) discloses an apparatus for the production of a product from chopped fibers.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Donald Heckenberg whose telephone number is (571) 272-1131. The examiner can normally be reached on Monday through Friday from 9:30 A.M. to 6:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Duane Smith, can be reached at (571) 272-1166. The official fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.


Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <<<http://pair-direct.uspto.gov>>>. Should you have questions

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on access to the Private PAIR system, contact the Electronic  
Business Center (EBC) at (866) 217-9197 (toll-free).

 12-6-5  
Donald Heckenberg  
Primary Examiner  
A.U. 1722